

**PRELIMINARY REMARKS**

Pursuant to the Examiner's notes on pages 2-3 of the January 31, 2007 Office Action, Applicant has resubmitted the Information Disclosure Statement of November 6, 2006 with updated copies of the materials cited therein.

**REMARKS**

Claims 1, 10, 23, 30-34, 76, 122, 129, 142, 149-153, 183 and 184 were previously pending in this application. Claims 2-9, 11-22, 24-29, 35-75, 77-121, 123-128, 130-141, 143-148, 154-182 and 185-225 had previously been withdrawn from consideration. Claims 1, 10, 23, 30-34, 122, 129, and 142 are amended herein. Claims 226-246 are added herein. As a result claims 1, 10, 23, 30-34, 76, 122, 129, 142, 149-153, 183-184 and 226-246 are pending for examination with claims 1, 122, 236, and 246 being independent claims. No new matter has been added.

**Rejections Under 35 U.S.C. §102**

Claims 1, 10, 23, 30-34, 122, 129, 142, and 149-153 stand rejected under 35 U.S.C. §102(e) as being anticipated by August et al. (US 2002/0143638). Applicant respectfully disagrees and requests reconsideration.

August discloses a method and apparatus for providing a wireless system for placing orders at a vendor transaction facility. (Abstract). August is directed generally to facilitating communications between a customer and a vendor, particularly with regard to customer selection of desired items and payment transactions. (Para. 0004). August does not teach, disclose or suggest order optimization as required by the claims of the present application.

Claim 1 states:

An order optimization system, comprising:

- an order processing computer;
- a communication device, said communication device being capable of
  - communicating with an order processing computer, and
  - transmitting an order to said order processing computer; and
- said order processing computer executing software which configures said order processing computer for
  - receiving said order from said communication device,
  - tracking availability of one or more resources used for order fulfillment,
  - determining an optimized utilization of resources for fulfillment of received orders,
  - assigning resources to said order in accordance with said optimized utilization, and
  - initiating fulfillment of said order.

August does not teach, disclose or suggest “determining an optimized utilization of resources for fulfillment of received orders” as required by claim 1. As August does not teach, disclose or suggest determining an optimized utilization of resources for fulfillment of received orders as required by claim 1, it cannot anticipate claim 1 under § 102(e). Withdrawal of the rejection of claim 1 is therefore respectfully requested. Similarly, claims 10, 23, 30-34, and 76, depend from claim 1 and are therefore patentable for at least the reasons discussed above in reference to claim 1.

Furthermore, independent claim 122 has a similar requirement. Claim 122 requires “determining an optimized utilization of resources for fulfillment of received orders,” similar to claim 1. This determining an optimized utilization of resources is not taught, disclosed or suggested by August. Accordingly, claim 122 and the claims that depend from it, namely claims 129, 142, 149-153, and 183-184 are patentable for at least this reason.

Accordingly, withdrawal of the rejection is respectfully requested.

### **Rejections Under 35 U.S.C. §103**

Claims 76, 183 and 184 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over August in view of McDonald, Jr. et. al. (U.S. 2002/0077750) and further in view of Borton (U.S. 2002/0188492). Applicant respectfully disagrees and requests reconsideration.

Claim 76 depends from claim 1 and claims 183 and 184 depend from claim 122. As described above, these independent claims require “determining an optimized utilization of resources for fulfillment of received orders.” As described above, August does not teach, disclose, or suggest determining an optimized utilization of resources for fulfillment of received orders as required by claims 1 and 122. Similarly, neither McDonald nor Borton teach, disclose, or suggest determining an optimized utilization of resources for fulfillment of received orders as required by claims 1 and 122. As claims 76, 183, and 184 depend from claims 1 and 122, the combination of the references does not teach, disclose, or suggest all the limitations of claims 76, 183 and 184 and therefore cannot render those claims obvious under 35 U.S.C. § 103(a). Accordingly, claims 76, 183, and 184 are patentable for at least this reason.

Accordingly, withdrawal of the rejection is respectfully requested.

### **New Claims**

Although new to the application and therefore not addressed by the Examiner in the January 31, 2007 Office Action, claims 226-246 were prepared after considering the cited art and are patentable over the cited art. For example, and without limitation, claim 236 requires optimizing processing of said at least one order. Claim 246 requires optimizing the matching of a subset of received orders with resources that are either available, or estimated to be available in the future. Neither of these is taught, disclosed or suggested by August. Claims 226-235 depend from claim 1 and are therefore patentable for at least the reasons discussed above in reference to claim 1. Claims 237-245 depend from claim 236 and are therefore patentable for at least the reasons discussed above in reference to claim 236. Additionally, these dependent claims contain further limitations similarly not disclosed by August, for example and without limitation, “predicting future availability of resources,” “tracking a processing status of said order,” and “determining a priority value of said order.” These dependant claims are therefore patentable for at least that further reason.

Accordingly, allowance of all pending claims is respectfully requested.

**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

By

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